Court No.3

Criminal Appeal no.1836 of 1984-old number
1585of 2001-new number

1. Vijai Singh alias Bijendra Singh
2. Munna alias Onkark Singh (dead)
3. Khushal Singh…….. Appellants

Versus

State of Uttaranchal… Respondent.

Hon'ble Irshad Hussain J.

The appellants, Vijai Singh alias Bijendra Singh and Munna lias Onkar Singh (who died during the pendency of the appeal) were convicted and sentenced to undergo one year R.I. u/s 147 I.P.C. and R.I. for two years u/s 324 IPC read with section1 49 I.P.C. and whereas the appellant Khushal Singh was convicted and sentenced to undergo R.I. for one and a half year u/s 148 I.P.C. and R, I, For two years u/s 324 I.P.C. per judgment and order dated 20.6.1984 passed by the Ist Additional Sessions Judge, Nainital in Sessions Trial no. 199 of 1982, P.S. Kaladhungi, district Nainital.

The appellants and the complainant injured Balam Singh have field criminal miscellaneous compromise application u/s 320 Cr.P.C. when the appeal was pending in Allahabad High Court and vide order dated 26.7.2000, the compromise was directed to be sent to the C.J.M. concerned for verification. In compliance thereof, the written compromise filed by the parties was duly verified before the C.J.M. Nainital on 16.8.2000 and the same was remitted back to the court for orders.

The offence punishable u/s 324 IPC is compoundable under sub section (2) of section 320 Cr.P.C. with the permission of the court and the offence may be compounded by the person to whom the hurt is caused. As mentioned above the injured Balam Singh had joined the appellant in preferring the application for compromise and he volunteered at the time of verification of the compromise by the C.J.M. Nainital that he has entered into compromise out of free will and consent and wants that the offence may be compounded. Considering this the compromise is accepted and the offence u/s 324 IPC is compounded and consequently, the appellants are

entitled to acquittal for the offence u/s 324 IPC for which they were convicted and sentenced by the learned Sessions Judge.

The offences punishable u/s 147 and 148 IPC are not compoundable. The learned counsel for the appellants submitted that on the facts and circumstances of the case, when the offence u/s 324 IPC has been compounded, the charges u/s 147 and 148 IPC must fail and the appellants need to acquitted under these counts also. On the other hand, the learned A.G.A. submitted that the offences punishable u/s 147 and 148 IPC being substantive offences, the compromise entered into between the parties for offence u/s 324 IPC shall have no bearing and it will not be just and proper to acquit; the appellants of the charges under the said distinct and substantive offences. No doubt, the offences publishable u/s 147 and 148 IPC are substantive but the peculiar facts and circumstances of the facts have to be taken into consideration and when the appellants and the injured are at peace, it is expedient in the interest of justice that the appellants need not be convicted for the offences u/s 147 and 148 IPC.

The learned counsel for the appellants placed reliance on a decision of Hon'ble Supreme Court in the case of Mahesh Chand and another Vs. State of Rajasthan, 1990(Supp.) Supreme Court Cases 681, in support of the contention that in the peculiar circumstances of the case, permission to compound the non-compoundable offence need to be given to meet the ends of justice. In the case before Hon'ble Supreme Court offence was u/s 307 IPC. The accosed was a lawyer and there was also a cross version of the occurrence in which parties have entered into a compromise and considering the nature of case and circumstances under which the offence was committed, the trial court was directed to accord the permission to compound the offence u/s 307 IPC also.

Another decision of Allahabad High Court in the case of Bachaya and others Vs. State of U.P., 1979 16) ACC 122, was also pressed into service in support of the submission that when the substantive offence has been compounded conviction u/s 147 IPC need not be maintained. In the reported case the; trial court acquitted the accused of offences punishable u/s 323/324/427 IPC and 24 Cattle Trespass Act but convicted and sentenced the accused u/s 147 IPC. It was found that when the accused have been

acquitted of the substantive offence their conviction u/s 147 was wholly misconceived. There is also another reported case of Madhya Pradesh High court relevant to the facts of the case. In Criminal Revision no.363 of 1973 dated 8.1.1975, Om Prakash Paliya Vs. The State of Madhya Pradesh, the offence u/s 427 IPC and 323/149 IPC were compounded on an application u/s 320 IPC but the offence u/s 147IPC being not compoundable, it was held that in the facts and circumstances of the case, the charge u/s 147 IPC must fail and the accused must be acquitted of all the charges levelled against him. The appellant was thus acquitted of the charge u/s 147 IPC also. The ratio of the decision submitted is that when substantive offence is being permitted to be compounded, it will be just and proper to acquit the culprit of the charge for the offence of rioting. In my view, the principle can safely be applied to the facts of the present case and the offence u/s 324 IPC having been compounded the appellants also deserve to be acquitted of the charges u/s 147 and 148 IPC as were framed against the two appellants separately.

The appeal is accordingly allowed. The impugned judgment and order dated 20.6.1984 of conviction and sentence is set aside. The appellants are acquitted of the charges levelled against them. The appellants are on bail. They need not surrender to their bail bonds, which are cancelled, and the sureties are discharged.

(Irshad Hussain, J.)

August 6, 2002.